85-3180

No. _____

Supreme Court, U.S.
FILED
AUG 19 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1984

Mahfouz El Shahawy, M.D.,
Petitioner

v

Larry P. Elliott, M.D.

On sworn Petition for Writ of Certiorari Directed to the United States Court of Appeals for the Eleventh Circuit in Case No. 84-3618, 83-3154 (District Court Case No. 31-545 Civ TWC)

SWORN PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNTIED STATES

MAHFOUZ EL SHAHAWY, M.D.
1851 Arlington Street
Suite 206
Sarasota, Florida 33579
(813) 366-9800
Petitioner Pro Se

QUESTIONS PRESENTED

I

WHETHER THE LOWER COURTS OVERLOOKED, OR MISAPPREHENDED THE FACT THAT THE DEFENDANT DR. ELLIOTT DID NOT PAY ANY OF THE BILL OF COSTS, BUT RATHER A THIRD PARTY, "SARASOTA MEMORIAL HOSPITAL BOARD", WHICH IS CURRENTLY INVOLVED IN RELATED LITIGATIONS IN THIS COURT.

II

WHETHER THE LOWER COURTS OVERLOOKED OR MISAPPREHENDED THE FACT THAT DEFENDANT'S ATTORNEY MR. STRELEC COMMITTED PERJURY BY SIGNING AN INCORRECT BILL OF COSTS. FURTHERMORE, HE PRESENTED THE COURT WITH PERJURED TESTIMONIES BY NUMEROUS WITNESSES. IS THIS NOT FRAUD ON THE COURT AND THE PLAINTIFF?

III

WHETHER THE LOWER COURTS OVERLOOKED OR MISAPPREHENDED THE FACT THAT THE BILL OF COSTS SUBMITTED WAS NOT SOLEY INCURRED IN THIS CASE, AND THE APPEAL COURT OVERLOOKED OR MISAPPREHENDED THE FACT THAT THE DISTRICT COURT ERRED IN DENYING PLAINTIFF'S MOTION TO STAY RULING UNTIL RELATED LITIGATIONS HAVE BEEN RESOLVED.

IV

WHETHER THE LOWER COURTS ERRED IN FINDING DR. ELLIOTT'S REMARKS QUALIFIEDLY PRIVILEGED, THAT ELLIOTT'S REMARKS WERE NOT UTTERED MALICIOUSLY, EXCLUDING EVIDENCE FOR DAMAGE OF SHAHAWY'S REPUTATION.

V

WHETHER THE LOWER COURTS OVERLOOKED, OR MISAPPREHENDED THE FACT OF THE NEWLY DISCOVERED EVIDENCE TO SUPPORT THE LINK OF A CONSPIRACY BETWEEN DEFENDANT DR. LARRY ELLIOTT AND SARASOTA COUNTY PUBLIC HOSPITAL BOARD, WHICH WAS DIRECTLY

OR INDIRECTLY RESPONSIBLE FOR DENIAL OF PLAINTIFF'S PRIVILEGES AT SARASOTA COUNTY PUBLIC HOSPITAL BOARD, WHICH IS IN VIOLATION OF FEDERAL ANTI-TRUST LAWS, CIVIL RIGHTS ACT, THE RACKETEERING INFLUENCED AND CORRUPT ORGANIZATION ACT, AND FLORIDA STATUTES AND COMMON LAW.

VI

WHETHER THE LOWER COURTS OVERLOOKED IMPORTANT FACTS AND FAILED TO REMAND FOR A NEW TRIAL BEFORE A JURY BASED ON NEW DISCOVERIES AND FRAUD OF SARASOTA COUNTY PUBLIC HOSPITAL FUNDS BY DEFENDANT LARRY ELLIOTT.

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Restatement of the Law (Contracts Sections 347-End Vol. II (1932) page 572 16

To the Honorable, the Chief Justice and associate Justices of the Supreme Court of the United States:

Dr. Mahfouz El Shahawy, the petitioner herein, prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Eleventh Circuit entered in the above-entitled case on April 18,1985. Motion for rehearing denied on May 21, 1985, (App. A,original lodged with clerk)

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Eleventh Circuit was rendered without express opinion, and entered on April 18, 1985. That judgment was a "per-curiam affirmed" judgment and is printed in Appendix B.

The Journal entry of the order of August 3, 1984 filed August 3, 1984 of the United States District Court for the Middle District of Florida seen on the docket of the District Court, (App.3-10 lodged with the Clerk).

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit (Appendix B) was entered on April 18, 1985. A timely petition for rehearing was denied on May 21, 1985 (Appendix A). The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254 (1).

STATEMENT OF THE CASE AND FACTS

The basis for federal jurisdiction in the court of first instance, the United States District Court for the Middle District of Florida was (28U.S.C.1332) diversity of citizenship between the plaintiff and the defendant at the time the action was filed. The plaintiff at the time the action was filed was a citizen of the State of Florida and the Defendant was at that time a citizen of the State of Alabama.

Plaintiff brought an action against the defendant the essence of which action was that the defendant, Dr. Elliott, a radiologist, wronged the plaintiff, a cardiologist, by false testimony at a hearing to determine plaintiff's qualifications to perform an invasive procedure called cardiac catheterization at Sarasota Memorial Hospital on October 21, 1980. Plaintiffs only acquaintance with defendant was limited to the time

between July 1973 and December 1975 when both were employed as faculty members at the University of Florida at Shands Teaching Hospital in Gainsville Florida. At the time the defendant was a member of the Division of Radiology and the plaintiff was an assistant professor in the Division of Cardiology. During the period from July 1973 to January 1974 plaintiff was the Director of the Adult Catheterization Laboratory at said university. This laboratory was physically located in the Department of Radiology. Defendant Dr. Elliott had had a long-standing fight with the Division of Adult Cardiology in order to gain control of the Adult Cardiac Cath. Lab. Plaintiff upon assumption of his position as Director of the Cath. Lab. at the university resented along with the rest of the faculty members of the Division of Cardiology, the defendant's continued effort to gain control over

the Adult Cardiac Catheterization Lab. These facts led to continuous misunderstandings and unpleasant working conditions in the Cardiac Cath. lab., which required at times intervention of the Chief of Staff and the Dean. This misunderstanding was well known to some members of the Sarasota Memorial Hospital staff who wanted to keep plaintiff out of the Cath. Lab.; so they called upon Dr. Elliott to come testify on their behalf. Dr. Elliott, who in the interim left the University of Florida and was practicing in Alabama, accepted quickly their invitation to testify on events alleged to have taken place in the Cardiac Cath. Lab. in January 1974 while plaintiff was in charge. Subsequent investigations however by the Credentials Committee of Sarasota Memorial Hospital did not support defendant's statements as evidenced in their reports of 5/13/80

and 5/15/89 (App. 11-13, lodged with the clerk). this recommendation was approved by the executive commitee at it's regular meeting on May 19, 1980 (App. 14, lodged with the Clerk). Still defendant Dr. Elliott had the temerity to come and testify falsely before the Sarasota County Public Hospital Board hearing on October 21, 1980. Even members af the Board at the time who sat as a jury recognized his intention and thought his testimony was not worth belief, as noted at the end of the hearing during the Board deliberation on October 22, 1980, Hearing Transcript (App. 15-40, lodged with the Clerk). Board member Mr. Rand:

> I realize that Dr. Curry's testimony and Dr. Daicoff's testimony I was very much impressed with their professional atmosphere than I was with the other folk (App.22 lodged with the Clerk).

Hospital Board member Mrs. Balis:

> Dr. Curry and Dr. Daicoff- they

all said he was compatent and adequate, and that's what I have to go on (App. 24-25, lodged with the Clerk).

Hospital Board Member Mr. Hereford:

I think that Dr. El Shahawy was treated very shabbily in this whole thing...(App. 28, lodged with the Clerk). I thought Dr. Cooper and Elliott were beauts (App. 30, lodged with the Clerk) ...They wrote letters, I think their testimony was a classic exhibition of the value of the hearsay rule. Both exhibited obvious bias against Dr. Shahawy. I think Elliott is a blow-hard, political type of college faculty member, he was Shahawy's rival.... He was Shahawy's rival at the University of Florida. He rose from the ranks stepping on his head, if that be the case. He had personal --he utilized whatever he did for personal gain as far as I'm concerned. And I think Cooper was an insidious smart alleck, and he had personal gain because he got the status of replacing Dr. Shahawy as the head of the Adult Catheteriziation while he was still a fellow in training. So he got some personal gain there, and I bet you he's exploited that from there on. I don't think either one of them are credible witnesses. I think their testimony was impeached very nicely tonight by a couple of witnesses that showed a great deal of credibility.

Hospital Board Member Balis:

I think personalies are in it more than qualifications. That's

the thing that bothers me the most ---I know you try and separate it, but it's in there (App. 36, lodged with the Clerk).

Hospital Board member Mr. Tolerton:

No one will deny that Dr. Shahawy is qualified to do the procedure (App. 38, lodged with the Clerk).

Hospital Board member Greenwald:

I just said I wanted to deny this six months (App. 39, lodged with the Clerk).

Hospital Board member Dr. W. Chapman:

As for the testimony of Dr. Cooper and Dr. Elliott I wasn't too impressed with it (App. 18, lodged with the Clerk).

After the Board hearing plaintiff filed this suit against defendant for his alleged false testimony. Furthermore plaintiff has obtained his records from the University of Florida during the discovery of this suit.

Again this record did not support defendant's allegation as shown - to the lower court during the trial. Defendant then for the third time at the time of trial presented a different and false testimony and tried to plead with the trial judge for qualified privilege. The defendant's testimony was false as shown by the record in the courts file.* Furthermore the record shows that the defendant paid no costs or legal expense of this action and that his costs and legal expenses were paid by the Sarasota county Public Hospital Board and an insurance company, as evidenced by the bill of costs in the courts file.**

The defendant has not proven or alleged that he has incurred any obligation that he repay his indemnitors in all events or even if costs were taxed against the plaintiff Dr. Shahawy. The defendant's counsel submitted a perjured bill of costs for $13,296.75.

*(App. 41-91, lodged with the Clerk).
**(App. 92-96, lodged with the Clerk).

The District Court Clerk however taxed costs against plaintiff for 6062.85 dollars. By final order made and filed on August 3, 1984, the district judge denied plaintiff's motion for relief from Clerk's taxation of costs (App.* lodged with the Clerk.) A timely notice of appeal of that order of August 3, 1984 was filed on September 5, 1984 along with Briefs (App. 105-148 Lodged with the Clerk.) The Appellate Court affirmed that order on April 18, 1985 without express opinion and denied petition for rehearing on May 21, 1985 (App.A).

While reviewing the bill of costs plaintiff pro-se discovered new evidence of conspiracy between defendant and officials of Sarasota County Public Hospital Board who were and are defendants in a related case in the Federal Court System (Case No. 83-3650). Shahawy v. William T. Harrison et. al.,

*(App. 97-104)

and a Certiorari currently pending in the Supreme Court (Case No. 84-2036.)

Furthermore, plaintiff discovered the excessive payments by the Hospital Board which were paid to witnesses on behalf of the defendant such as Dr. Chinoy who was not an expert witness, who was paid over 4,000 dollars for less that one-half hour of a perjured testimony at the trial court. Other perjured testimonies on behalf of the defendant for which the witnesses were reimbursed by the Hospital Board involved technician Jeanette Frierson, Chuck Cooper, Dr. Kelly and others. All this evidence on the bill of costs which is part of the court file (App. * lodged with Clerk.) Plaintiff pro-se could not have discovered this evidence prior to review of the bill of costs. Plaintiff then filed a timely motion to vacate the Clerk's taxation of costs of June 12, 1984 which was again denied * (App. 92-96)

(App.105-106 lodged with the clerk). Subsequently plaintiff appealed the case and again asked to vacate the clerks taxation of costs on June 1984 and to remand the case to the District Court for a new trial by jury based on newly discovered evidence of fraud and conspiracy, or alternatively to stay the case herein pending completion of related suits and investigation by state and federal authorities. this request again was denied (App.149-152 lodged with Clerk) The record which is currently in the Court's possession is replete with evidence to support the fact of the abuse of the power of the office by some officials of Sarasota Memorial Hospital Board on supporting the defense of the defendant for personal vendetta.

REASONS FOR GRANTING WRIT

The record in this case shows that the defendant Dr. Elliott did not pay any of the costs in this action;that the

costs were paid by the Sarasota County Public Hospital Board and by an insurance company as alleged in Dr. Shahawy's pleadings and documented in the Court's file.

Dr. Elliott has not proven or even alleged that he has incurred any obligation that he repay his indemnitors in all events or if costs are taxed against Dr. Shahawy and it was incumbent on him to go forward forthrightly and disclose all the details of his agreement regarding indemnification of his legal expense to the court where such illegal maintenance was alleged by Dr. Shahawy. The Hospital Board and insurance company, which did not even insure the defendant, had no legal right to reimburse Dr. Elliott for his legal expense in this action. A special contract to pay to any ordinary witness amendable to process more than the regular fee is nonenforceable for want

of consideration. Moreover, because the contract offers enticement to perjury and tends thereby to pervert the course of justice, it is contrary to public policy and void. 81 AM Jur 2d 51; State EX.REl. Spillman v First Bank of Nickerson 114 Neb 423, 207 N.W. 674, 45 ALR 1418.

Similarly, the fee of an expert witness retained by a party may be decided by a contract between them, provided "That a lawyer shall not pay, offer to pay,or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case, although a lawyer may advance, guarantee, or acquiesce in the payment of:

1. Expenses reasonably incurred by a witness in attending or testifying.
2. Reasonable compensation to a witness for his loss of time in attending or testifying.

3. A reasonable fee for the professional services of an expert witness" as provided by disciplinary rule 7-109(c) of the Code of Professional Responsibility upheld by Person v Association of Bar (1977 CA2 NY) 554 F2d 534 cert.den 434 &S924, 54 Led 2d 282, 98.SCl.403. 33 Fed Proc, LED page 572 (pat 80:205 and 80:204)

The Hospital Board's agreement to indemnify Dr. Elliott for any legal costs he might incur as a result of his testimony regarding Dr. Shahawy was unreasonable, particularly in view of their conclusion about Dr. Elliott's false testimony at the end of the hearing of October 22, 1980, and therefore in violation of the aforestated Rule 7-109(3) of the Code of Professional Responsibility, because that agreement falls within the modern difinition of maintenance because it

obstructs justice by inciting perjury by relieving the witness from the financial burden of defending himself from a suit in case he testifies wrongfully, 9 Fla Jur 2d page 331. 14 AM Jur 2d 843.

The restatement of the Law (Contracts sections 347 End Vol II (1932) 572) states " A bargain to indemnify another against the consequences of committing a tortious act is illegal unless the performance of the tortious act is only an undesired possibility in the performance of the bargain, and the bargain does not tend to induce his false testimony as set forth above."

If Dr. Elliott promised to repay the Hospital Board for having paid his costs, in the event costs were taxed against Dr. Shahawy, that would have the effect of both the Hospital Board and Dr. Elliott being relieved of the financial consequences, (legal expenses) attendant on Dr. Shahawy's suit against

Dr. Elliott. That also would be part of the illegal, systematic joint action which succeeded in excluding Dr. Shahawy from the heart catheterization laboratory at Memorial Hospital. It is Hornbook law that neither party to such an illegal contract has enforecable rights where they are in part delicto, that is to say Dr. Elliott could incur no legally enforceable liability to repay his indemnitors where both parties are in pari delicto. But if Dr. Elliott were ordered by the Court to pay back the Hospital Board on the grounds of his greater culpability, because jurisdiction to award costs on District Courts grew out of the Court's equity jurisdiction and follows equitable principles, in no event should Dr. Elliott's costs consequent on his false testimony be taxed against Dr. Shahawy, especially in view of Dr. Elliott's postulated, greater culpability and the illegal maintenance contract

which tends to induce false testimony. Dr. Elliott's hands are dirty. To have standing in equity Dr. Elliott's hands must be clean therefore he has no right to ask this Court which follows equitable principles to sustain the District Court which awarded him costs.

F.R.C.P. Fed R Civ-54 (d) provides that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs..." Thus, the Court has discretion to allow or disallow expenditures ordinarily recoverable as costs of suit, but it may not either reduce or increase the amount of the costs from those reasonably and actually incurred by the prevailing party see Heverly v Lewis 99 F.R.D. 135, 136 (1983); Cooper Liquor, Inc. v Adolph Coors 684F2d 1087 1101 (5th Cir. 1982). Both under the Law of Florida City of Boca Raton v Boca Village Corp. (Fla App) 372 50 2d 485 and under rule 54 (D) of the Federal Rules of Civil Procedures, costs are in the nature of indemnification Heverly v Lewis Supra; Cooper Liquor v Adolph Coors Supra.

Judges only have discretion to award, (that is to say to indemnify for) costs actually incurred and it is an abuse of discretion to award costs to a defendant who has incurred no liability to pay costs and has paid no costs. Heverly v Lewis Supra; Cooper Liquor, Inc. v Adolph Coors Supra; City of Boca Raton v Boca Village Corp. Supra.

Even if Dr. Elliott has promised to repay the Hospital Board if costs are assessed against Dr. Shahawy, because Dr. Elliott has dirty hands as set forth above, the equitable principle that he who seeks recourse from a court in equity must come into court with clean hands prevents the court from awarding him costs. Because costs under rule 54 (D) of the Federal Rules of Civil Procedure are in the nature of an indemnification (Heverly v Lewis Supra.) It is fraud on the court and on Dr. Shahawy that Dr. Elliott has asked the court for allowance of his costs where he has neither paid or incurred any liability to pay any costs of this action as aforestated by virtue of his contract of indemnity

with the Hospital Board which has paid all his costs. Any such request for over-reimbursement is considered fraudulent and unjust. Pan American Life Ins. Co. v Mancuso 186 502d 339; Miller v Prudential Ins. Co. 362 A2d 1017 43 Am Jur 2d page 1106.

This court should exercise its' discretion and grant a writ of certiorari because the Appellate Court santioned an extreme departure from the accepted and usual course of judicial proceeding by the Trial Court which abused its' discretion in awarding costs to a defendant who paid no costs and incurred no liability to pay costs and should grant a writ of certiorari because such a request for over-reimbursement for costs is considered fraudulent and unjust as aforesaid. This court has not decided but should decide the important question whether under Rule 54d of the Federal Rules of Civil Procedure the courts have discretion to award costs to a party who has neither paid nor incurred liability to pay costs of an action.

This court should grant a writ of

certiorari because the Appellate Court's decision in affirming the District Court's award of costs to the defendant who paid no costs and incurred no liability to pay those costs is in conflict with Cooper Liqour, Inc. v Adolph Coors 684 F2d 1087 1101 5th Cir 1982.

The Appellate court erred by denying appellant's motion to vacate the award of costs and remand for jury trial on the basis of newly discovered evidence. This was a departure from the usual course of judicial proceedings and sanctioned the unjust judgment of the trial judge which had imposed costs on appellant in favor of a defendant who had testified falsely against appellant under circumstances proving his malice (App. 41-90, lodged with the clerk).

Appellate Court's denial of plaintiff's motion to remand for a new trial in view of the evidence of new discovery is inconsistant with rule 60 (b) (2) Federal Rules of Civil Procedure which provide in relevant part that:

> "on motion and upon such terms as are just, the court may relieve a party... from a final judgment,... for ... (2) newly discovered evidence which by due

> diligence could not have been discovered in time to move for a new trial under rule 59 (b);...

Appallent could not have discovered prior to review of bill of costs even with due diligence that Sarasota County Public Hospital Board who had filed a Motion with the District Court on September 16, 1981 as non-party (App. 4, lodged with the clerk) was the entity who had been maintaining the defense of defendant Dr. Elliott, who is not even a member of the medical staff of Sarasota Memorial Hospital and who also was found by the Board to be not worthy of belief at it's hearing on October 21, 22, 1980 (App. 18, 22, 30, lodged with the clerk). The fact that Sarasota Memorial Hospital Board became a party of a related suit which is currently in this Court does not give them the power to abuse public funds in maintaining Dr. Elliott's defense for personal reasons. This abuse of the public funds of Sarasota County taxpayers by the Hospital Board in maintaining the defense of Dr. Elliott for personal reasons should not be sanctioned by the Court. The

Appeal court ruling on this matter was in conflict with established case law 7 Moore's Federal Practice 60.23(4) and cases sited herein.

In view of the above and persuant to Rule 17 (a, c) of the Supreme Court's Rule, plaintiff feels that certiorari should be granted and the case should be remanded for a new trial before a jury. It is Hornbook Law that such fraud practiced on any court is grounds for any court to set aside at any time such unjustified judgment.

CONCLUSION

Based on the forgoing facts and authorities the plaintiff would like to assert the following:

1. Dr. Elliott did not pay one cent of the bill of costs nor any other expenses in this case; rather, it was paid fully by Sarasota Memorial Hospital Board and an insurance company, PIMCO, which covers other physicians involved in related litigation in this Court as well s the State Court. It is of interest to note that PMICO was not insuring Dr. Elliott. Those payments were improper and amount to conspiracy and fraud.

2. It should not be overlooked by the Court that defendant's counsel has presented an improper bill of costs signed by him under penalty of perjury, and also has provided perjured testimony by witnesses called by the defense.

3. A payment of $4625.00 from the Sarasota County Public Hospital Board's funds to Dr. D. Chinoy, a former student, a non-expert

witness, to come from Jacksonville to Tampa for one-half hour of testimony (which was perjured) is definitely unlawful and a fraud of Sarasota County taxpayer's money. This should not be left unpunished.

4. The bill of costs, which has been paid by the Sarasota Memorial Hospital Board and not by defendant Elliott, represents not only money spent in this case but in at least three other related litigations referred to above which are still pending in state and federal Courts.

5. Sarasota county Public Hospital Board has abused the power of the office in allowing such expenses for Dr. Elliott whose link with related cases should be recognized pending completion of litigation questioning his conduct.

6. Newly discovered evidence shows beyond any doubt that as a result of the conspiracy and scheming between defendant Dr. Elliott and officials of Sarasota Memorial Hospital Board and others, plaintiff's privileges at Sarasota Memorial Hospital to practice medicine were

unlawfully revoked, in violation of plaintiff's civil and constitutional rights.

7. Newly discovered evidence should revove any shred of doubt that scheming and conspiracy between Dr. Elliott and other parties has resulted directly and indirectly in non-renewal of plaintiff's privileges by the Sarasota County Public Hospital Board; in spite of the fact that petitioner's training and credentials in the field of cardiology and internal medicine exceeds those required from any physician currently practicing at said hospital (App. 152-159, lodged with the clerk). This unlawful conduct was in violation of plaintiff's civil rights and in in violation of the United States Constitution. Plaintiff feels that Dr. Elliott is fully responsible for the injustice which was done and this case should be remanded for new trial before

a jury.

Based on the foregoing, plaintiff prays this Court to grant the certiorari and stay the mandate for costs until the case has been heard on its' merit.

Respectfully submitted,

MAHFOUZ EL SHAHAWY, M.D.
Plaintiff/Appellant Pro Se
1851 Arlington Street
Suite 206
Sarasota, Florida 33579
(813) 366-9800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Petition was furnished by mail to defendant Dr. Larry Elliott and his counsel Mr. Frank E. Strelec Esq. and Clare L. Hamner Esq. P.O. Box 3979 Sarsota, Florida 33578, Charles Johnson M.D., Chairman Sarasota County Public Hospital Board, Sarasota Memorial Hospital, 1700 Tamiami Trail, Sarasota, Florida 33579, Department of Justice, Washington D.C., and Mr. Philip Beauchamp, Administrator, Sarasota Memorial Hospital, 1700 Tamiami Trail, Sarasota, Florida 33579, this 16th day of August 1985.

M. El SHAHAWY, M.D., Petitioner Pro Se
1851 Arlington Street, Suite 206
Sarasota, Florida 33579
(813) 366-9800

STATE OF FLORIDA
COUNTY OF SARASOTA

SWORN AND SUBSCIBED TO ME THIS 16th DAY OF AUGUST, 1985, AND BEFORE ME PERSONALY APPEARED MAHFOUZ EL SHAHAWY, M.D., TO ME WELL KNOWN AND KNOWN TO ME TO BE THE PERSON WHO EXECUTED THIS DOCUMENT.

NOTARY PUBLIC

My Commission Expires:

2/13/86

APP. A

MAHFOUZ EL SHAHAWY, M.D.

Plaintiff-Appellant,

versus

LARRY P. ELLIOTT, M.D.

Defendant-Appellee

- - - - - - - - - - - - -

Appeal from the United States District Court for the Middle District of Florida

- - - - - - - - - - - - -

ON PETITION FOR REHEARING

(May 21, 1985)

Before GODBOLD, Chief Judge, KRAVITCH and HATCHETT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

APP. B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 84-3618
Non-Argument Calendar

D.C. Docket No. 81-545

MAHFOUZ EL SHAHAWY, M.D.,

Plaintiff-Appellant,

v.

LARRY P. ELLIOTT, M.D.

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(April 18, 1985)

Before FODBOLD, Chief Judge, KRAVITCH and HATCHETT, Circuit Judges.

PER CURIAM: AFFIRMED. See Circuit Rule 25.

"Costs taxed against plaintiff-appellant."

Judgment Entered: April 18, 1985
For the Court: Spencer D. Mercer, Clerk

By:_____,
Deputy Clerk

ISSUED AS MANDATE: